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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,572	02/22/2002	Thomas Hobson Outten	OUT-01	4040

7590

01/16/2004

Ralph Bailey  
Ralph Bailey, P.A.  
125 Broadus Ave.  
Greenille, SC 29601

EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 01/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/036,572

Applicant(s)

OUTTEN ET AL.

Examiner

Josiah C. Cocks

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached comments.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☒ Newly proposed or amended claim(s) 11 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached comments.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

**ADVISORY ACTION**

**Continuation of item 2.**

1. The recitation in claim 10 of an actuator ring “comprising said actuator member” is language that has not yet been examined or considered and affects the scope of the claims. This language would require further consideration.

**Continuation of item 5.**

2. Applicant asserts that the affidavit submitted on 6/30/03 under 37 CFR 1.132 is sufficient to overcome the rejections to the claims based on the *Jones et al.* reference because this reference is in operable. There is insufficient evidence to reach this conclusion. Applicant asserts that the device of *Jones et al.* is in operable because vertical rod (109) will not freely pass through guide (105). The affidavit submitted 6/30/03 simply asserts that in a three day test the device of *Jones et al.* became fouled with grease and food matter. First, it is noted that this affidavit does not assert that the grease and food matter prevented the vertical rod (109) from freely moving through guide (105). Second, the affidavit shows that the *Jones et al.* device is, in fact, not inoperative as it functioned over the course of a three-day test. Even if the examiner were to assume that at the end of the three day test the vertical rod (109) would no longer freely pass through guide (105), this is not sufficient evidence to show that the device of Jones is in operative. To the contrary, this affidavit would show the device of *Jones et al.* was operative for at least a portion of the test.

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Applicant also asserts in requesting reconsideration of claims 1, 3-5, and 7 that Figs. 1 and 3 of *Jones et al.* are not “properly scaled” and can not show that the spring loaded plungers (111 and 311) are adjacent pivot points (112 and 312). This argument is not persuasive as the examiner considers that the plungers are shown in the Figures as adjacent the pivot points. Applicant further asserts that applicant’s integral valve actuating arm (B) is distinct from the vertical rod (109) and guide (105). This argument is also not persuasive, as rod (109) has been asserted by the examiner to be integral with actuator arm (110). This rod (109) and arm (110) provide the same function as applicants actuating arm (B) and are considered to be the equivalent of the integral valve actuating arm recited. Applicant’s claims do not prohibit the presence of a guide such as guide (105). Applicant further asserts on p. 9 of the response filed 11/3/03 that the actuator arm (E) (note: it appears applicant intends to refer to actuator arm (B)) is not structurally equivalent to the vertical rod (109) but instead comprises a single unitary structure, however, applicant’s claims do not include the “single unitary structure” language argued.

In regard to claim 9 and 11, while the amendment filed 11/3/03 has not been entered, if it were, claims 9 and 11 are duplicate claims would be objected to.

### ***USPTO Contact Information***


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

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• If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
January 15, 2004



JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3749